

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 937 Florida Childhood Lead Poisoning Reduction Act
SPONSOR(S): Joyner
TIED BILLS: None. **IDEN./SIM. BILLS:** CS/SB 2202(s)

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care		Garner	Collins
2) Judiciary			
3) State Administration			
4) Finance & Taxation			
5) Health Appropriations (Sub)			
6) Appropriations			

SUMMARY ANALYSIS

The federal Centers for Disease Control and Prevention (CDC) have termed excessive absorption of lead as "one of the most common pediatric health problems in the U.S. today and it is entirely preventable." Approximately 434,000 U.S. children aged 1-5 years have blood-lead levels greater than the CDC recommended level of 10 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of blood. Lead poisoning can affect nearly every system in the body. Because lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death.

HB 937 creates the "Florida Childhood Lead Poisoning Reduction Act." The bill affects both the Department of Health's role as the entity responsible for public health education and responsible for public environmental health regulation. The bill expands the awareness program within the department and increases its regulatory role in identifying and abating properties that pose a risk for lead poisoning.

The bill establishes a process for certifying state employees and contractors who will conduct the required inspections and abatement activities required in the bill; as well as establishes sanctions for violations of the provisions of the bill. Finally the bill provides immunity from civil liabilities those property owners that comply with the program and penalties for persons who do not comply with the program.

The bill provides an effective date of July 1, 2004.

The Department of Health estimates that there will be a fiscal effect of \$826,054 in Year 1 and \$979,353 in Year 2, to implement the provisions of this bill.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0937.hc.doc
DATE: March 23, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a “no” above, please explain:

1. This bill expands the department’s health promotion activities and its environmental health regulation.
2. This bill does not specifically raise or lower taxes, but will require state revenue to cover the cost of the outreach and inspection duties required under the bill.
3. The bill increases the regulation of private property owners who have properties built prior to 1978, and requires them to allow inspections and make modifications to their properties if they are found to be at-risk for causing lead poisoning.

B. EFFECT OF PROPOSED CHANGES:

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The bill establishes a process for certifying state employees and contractors who will conduct the required inspections and abatement activities required in the bill; as well as establishes sanctions for violations of the provisions of the bill. Finally the bill provides immunity from civil liabilities those property owners that comply with the program and penalties for persons who do not comply with the program.

PRESENT SITUATION

The federal Centers for Disease Control and Prevention (CDC) have termed excessive absorption of lead as “one of the most common pediatric health problems in the U.S. today and it is entirely preventable.”¹ Approximately 434,000 U.S. children aged 1-5 years have blood-lead levels greater than the CDC recommended level of 10 micrograms of lead per deciliter ($\mu\text{g}/\text{dL}$) of blood. Lead poisoning can affect nearly every system in the body. Because lead poisoning often occurs with no obvious symptoms, it frequently goes unrecognized. Lead poisoning can cause learning disabilities, behavioral problems, and, at very high levels, seizures, coma, and even death.

The major source of lead exposure among U.S. children is lead-based-paint and lead-contaminated dust found in deteriorating buildings. Lead-based paints were banned for use in housing in 1978. However, approximately 24 million housing units in the U.S. have deteriorated leaded paint and elevated levels of lead-contaminated house dust. More than 4 million of these dwellings are homes to one or more young children. Children are at particular risk for lead exposure due to their regular hand-to-mouth activity during daily play where lead-based paint is peeling or flaking. The dust from this deteriorating paint is easily ingested and is a significant source of exposure.

According to the children’s Environmental Health Network, children 9 months of age to 2-1/2 years of age are at greatest risk of lead poisoning. They have greater hand-to-mouth activity, their brains are

more sensitive to the toxic effects of lead, and they absorb a greater percentage of the lead that is ingested. Other effects of lead poisoning may include diminished intelligence, learning disabilities, delayed congenital development, interference with calcium metabolism, reduced heme syntheses (or the body's ability to manufacture red blood cells), reduced kidney function, and damage to the central nervous system. The damage to the central nervous system is not reversible. The extent to which these effects will be present in a child depends on a number of factors, including the duration and intensity of exposure. These factors are still being studied to determine long-term effects of exposure on children.

According to DOH, lead poisoning became a reportable disease in 1992. Since then, more than 7,000 children in Florida have been identified with a confirmed case of lead poisoning, a venous (blood drawn through the vein) blood lead level ≥ 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$). This is likely an underestimation of true morbidity. Even with moderately high levels of lead, many children show no signs or symptoms, and will not be tested. Children enrolled in the Medicaid program are required by federal law to be tested and they represent the largest population screened. Many other children are exposed to lead, but are not screened. Confirmed venous draws are counted as cases, but many children with elevated unconfirmed capillary (finger stick) tests do not receive their appropriate follow-up venous draw. Blood-lead results submitted by laboratories do not always contain complete and consistent identifying information important for thorough public health surveillance.

CURRENT DEPARTMENT OF HEALTH PROGRAMS

The Childhood Lead Poisoning Prevention Program currently operates in the Department of Health (DOH), Bureau of Community Environmental Health. The program has with two full-time equivalent positions (FTEs), under a grant from the U.S. Centers for Disease Control and Prevention (CDC). The DOH program conducts surveillance of childhood lead poisoning; identifies cases of childhood lead poisoning; and monitors case management of poisoned children.

Funds are passed through the program to the county health departments (CHDs) to operate local childhood lead poisoning prevention programs. Local programs conduct educational activities for parents, investigate the source of lead in a child's environment, and manage medical treatment of lead poisoned children.

HB 937 expands the current lead poisoning prevention program within the DOH by:

- Requiring the Secretary of Health to appoint a Director of Lead Poisoning Prevention who will be responsible for carrying out and administering the provisions of this act.
- Establishes the Director as the Chair of the Lead Poisoning Prevention Coordinating Council, which shall include a designee of the Secretary of the Department of Community Affairs and a designee of the Secretary of the Department of Environmental Protection.
- Requires the Director, in conjunction with the Coordinating Council, to establish a statewide program for the prevention, screening, diagnosis, and treatment of lead poisoning, including the elimination of the sources of such poisoning through research, educational, epidemiological, and clinical activities as necessary.

LEAD POISONING PREVENTION COMMISSION

The bill also creates the Lead Poisoning Prevention Commission with the responsibility of studying and reporting to the Governor and the Legislature strategies to encourage properties owners to bring their properties into compliance with the provisions of this law. The Commission will consist of 9 members including:

1. The Director of Lead Poisoning Prevention;
2. The Secretary of the Department of Community Affairs or his or her designee;
3. One member of the Senate, appointed by the President of the Senate;
4. One member of the House of Representatives, as appointed by the Speaker of the House;

5. Five members appointed by the Governor, which shall include:
 - a) A child advocate;
 - b) A health care provider;
 - c) A representative of local government; and
 - d) Two owners of rental property in the state.

LEAD-FREE AND LEAD-SAFE PROPERTY STATUS

In addition to expanding the Department of Health's (DOH) educational role in preventing and identifying persons at risk for lead poisoning, HB 937 expands the department's regulatory role in identifying, inspecting, and abating properties at-risk for causing lead poisoning.

Specifically, the bill requires that property built before 1978 be lead-free or lead-safe. The responsibility for enforcing the provisions of this section is directly or indirectly placed with the Director of Lead Poisoning Prevention. The director must promulgate rules establishing the standards to be met by property owners in need of acquiring a lead-safe or lead-free property status. The director must also establish procedures to be used by property owners to report the results of lead investigations that show the property is lead-free or lead-safe.

The bill then specifies actions that must be taken by the property owner, who is not the occupant of the property, to protect the occupants from health hazards during work to remove or reduce lead-based paint (LBP) or LBP hazards. The bill relieves the property owner of responsibility for any negative health outcomes upon the refusal of the occupant to temporarily leave the residence so the owner can make any necessary repairs, or if the tenant refuses reasonable requests of the property owner to allow him or her to address the LBP hazards in total.

Property owners are given the opportunity to undergo a voluntary inspection to determine whether their properties are in compliance with the provisions of the bill; and if they so choose to do so, are accorded the liability protections provided for in this bill.

In the event that property owners do not volunteer for the inspections as described in this bill, the Lead Poisoning Prevention Commission will develop procedures for involuntary inspections, and corresponding enforcement and penalties necessary to obtain compliance for these property owners by January 1, 2007. Property owner who do not volunteer for the inspections and are found in violation of the lead-free requirements will be subject to the penalties developed by the Commission, as well as, subject to civil liabilities.

The bill also provides protection to tenants who bring forth information pertaining to lead poisoning risk against retaliation from property owners.

CERTIFICATION OF INSPECTORS AND CONTRACTORS

The EPA developed regulations for accreditation of training programs for targeted housing and child-occupied facilities (40 CFR 745.225) and certification of individuals and firms engaged in lead-based paint activities related to target housing and child-occupied facilities (40 CFR 745.226). Published in 1996, these regulations include requirements to ensure that lead inspection and abatement professionals are capable of and required to use work practices that are safe, reliable, and effective. The federal Housing and Urban Development (HUD) Lead Paint Hazard Control grant program requires that certified workers be used in its grant program for low-income privately-owned dwelling units.

On August 29, 1996, the EPA published a final rule for the certification and training of lead-based paint professionals (61 FR 45778). At that time, the implementation of the federal program was delayed until August 29, 1998, to allow states and Indian tribes to apply and receive authorization to run their own EPA-approved lead-based paint programs based on the model program that the EPA provided. After March 1, 1999, state training programs could no longer provide, offer, or claim to provide training or

refresher training for lead-based paint activities defined in 40 CFR 745.223 without being accredited by the EPA according to the requirements of CFR 745.225. The rule also provided that after August 30, 1999, no individuals or firms could perform, offer, or claim to perform lead-based paint activities as defined under 40 CFR 745.223 without certification from the EPA under 40 CFR 745.226 to conduct those activities.

A training program can seek accreditation to offer lead-based paint activities courses in any of the following disciplines: inspector, risk assessor, supervisor, project designer, and abatement worker. To be EPA-accredited, a training program must meet a number of requirements outlined in 40 CFR 745.225(c). Besides general requirements necessary for approval as a training program, there are also specific requirements for training in the specific disciplines of inspector, risk assessor, supervisor, project designer, and abatement worker.

HB 937 provides language that is similar to the model language for lead inspector certification programs required by federal law under the EPA; however, the language is not sufficiently similar to allow Florida to become a state with an EPA-approved certification program.

C. SECTION DIRECTORY:

Section 1. Creates a popular name for the bill creating the "Florida Childhood Lead Poisoning Reduction Act."

Section 2. Provides legislative findings related to lead poisoning.

Section 3. Provides legislative purposes of the act.

Section 4. Creates a Director of Lead Poisoning Prevention; provides for the duties and responsibilities of the director; creates a Lead Poisoning Prevention Coordinating Council; provides for membership of the council; provides for the establishment of a statewide program for the prevention, screening, diagnosis, and treatment of lead poisoning; creates a Lead Poisoning Prevention Commission; and provides for membership and duties of the commission.

Section 5. Establishes requirements for lead-free and lead-safe property status; establishes notice requirements when an owner of an affected property intends to make repairs to or perform specified maintenance work on an affected property; and provides requirements and procedures with respect to access to and vacation of affected properties.

Section 6. Provides for the voluntary inspection of affected properties; requires the Lead Poisoning Prevention Commission to develop a proposal for the implementation of mandatory inspections of all affected properties or to develop alternative measures of enforcement and penalties to ensure compliance with lead-free or lead-safe standards by a specified date; allows for involuntary inspections under specified circumstances; and establishes requirements for inspection reports.

Section 7. Requires the accreditation of persons performing lead hazard reduction activities; establishes criteria for accreditation of persons performing inspections; provides for the duration of accreditation; sets registration fees for persons performing lead hazard abatement and persons performing inspections; establishes requirements for the deposit of fees; establishes enforcement authority for violations of this section.

Section 8. Provides requirements for immunity from civil liability for injuries or damages resulting from the ingestion of lead; provides exceptions to immunity; establishes requirements with respect to documentation and notification of injury; provides procedure and requirements with respect to a qualified offer of settlement; establishes a maximum amount payable under a qualified settlement offer; provides for certification of compliance with respect to a qualified offer; and provides for presumption of negligence in actions against property owners not in compliance.

Section 9. Provides for enforcement of the act; providing for reporting of enforcement actions; and providing for receivership of properties not meeting certain standards.

Section 10. Provides private right to injunctive relief; providing for notice of intent to seek injunctive relief; providing for recovery of costs and attorney's fees.

Section 11. Prohibits retaliatory evictions; defines "retaliatory action"; and provides for relief for retaliatory eviction and retaliatory action.

Section 12. Establishes a statewide comprehensive educational program; provides for a public information initiative; providing for distribution of specified literature; providing for a Lead Poisoning Prevention for Properties seminar;

Section 13. Establishes a program for early identification of persons at risk of elevated levels of lead in the blood; providing for screening of children; identifies persons for screening priority; provides for the maintenance of records of screenings; requires the reporting of cases of identified lead poisoning.

Section 14. Creates definitions.

Section 15. Provides an effective date of July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

No funding source is identified for any of the programs established by this legislation, except the licensing/registration program which certifies individuals and firms to conduct the investigations of lead sources and the abatement of lead. The licensure program must collect fees (a fee schedule must be developed by the Department of Health) to support the program and to support the activities of state and local staff who conduct lead investigations. DOH estimates that these fees will generate \$132,018 in Year 1 and \$133,977 in Year 2, but will be used to offset the cost of the licensing/registration program.

2. Expenditures:

Only one new position is expressly created by this legislation (the Director of the Lead Poisoning Prevention Program); however, the Department of Health estimates that a total of 14 FTEs would be required (including the director position) to implement this program as described in the bill. The following table, provided by the Department of Health) provides detail expenditure estimates.

Estimated Expenditures	Year 1	Year 2
Salaries		
Environmental Manager	\$69,825	\$95,893
Systems Project Consultant	49,875	68,495
(4) Data Entry Operators	103,740	142,470
(3) Registered Nursing Consultants	164,588	226,034
(4) Environmental Specialists III	191,520	263,021
Staff Assistant	33,250	34,248
Expenses		
9 FTE @ Std Professional with medium travel	\$149,661	\$122,112
5 FTE @ Std Support Staff	40,095	27,080

Operating Capital Outlay		
9 FTE @ Std Professional	\$13,500	
5 FTE @ Std Support Staff	10,000	
Total Estimated Expenditures	\$826,054	\$979,353

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Property owners of dwellings built before 1978 will have to pay to have a lead investigation conducted on each of their properties to determine if the property is eligible for a "Lead-Free" or "Lead-Safe" designation. If the property does contain a lead-based paint hazard, the property owner will have to pay to remove or reduce the lead-based paint hazard. The Department of Health estimates that an investigation to certify a dwelling is lead-free would cost between \$500 - \$1500. An investigation to certify a dwelling is lead-safe would be an estimated \$150-\$500, and would have to be redone on a regular basis.

D. FISCAL COMMENTS:

The only position identified in the bill is the Director of the Lead Poisoning Prevention Program. The remaining positions are based on the Department of Health's experience in starting such programs. The bill allows the director to designate local representatives to perform most functions that directly involve an affected property. There is considerable latitude in who is eligible to serve as the local designee (DOH, Building Codes, Housing Authority, and others). Therefore, DOH reports that it is not possible to determine the cost that will be incurred from this program at the local level.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Health is provided the rulemaking authority to implement this act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The sponsor will introduce a strike everything amendment to conform the bill to CS/SB 2202. The strike everything amendment contains several substantive changes, including changing the immunity provisions contained in HB 937 as originally filed.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES